83-481

Office-Supreme Court, U.S.
FILED
SEP 8 1983

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

EDDIE THOMPSON, JR.,

Petitioner-Plaintiff,

v.

JUNE HEDRICK
JOSEPH CONDIT,

Respondents-Defendants,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

EDDIE THOMPSON, JR., Pro Se
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

CERTIFICATE OF SERVICE:

I hereby certify that 3 copies of the foregoing Petition have been served by the United States mail this _____ day of September 1983, upon: Mr. Stephen McMurtry, 906 City-County Building, Covington, Kentucky 41011, and Mr. Jerald Condit, 5070 Pleasant Avenue, Suite 12, Fairfield, Ohio. 45104.

_____

EDDIE THOMPSON, JR.

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

QUESTIONS PRESENTED

1. Do employees of a municipality, acting for the municipality, have good faith immunity when the alleged action is an unconstitutional implement or executes a policy statement, ordinance, regulation, or decision officially adopted and/or promulgated by that body's officers?

2. In a contractual matter between City and Plaintiff where Defendants accept service on behalf of the City and wrongfully withhold funds for that service, could Plaintiff recover on quantum merit?

3. Where federal court has jurisdiction, is federal court required to decide cases on the merits?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

No. _____

EDDIE THOMPSON, JR.,

Petitioner-Plaintiff,

v.

JUNE HEDRICK
JOSEPH CONDIT,

Respondents-Defendants,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner Eddie Thompson, Jr. respectfully prays that a Writ of Certiorari issue to review the Judgment and/or Order (Unpublished Decision) of the United States Court of Appeals for the Sixth Circuit, entered in the above styled case on May 4, 1983.

OPINION BELOW

The Order of the Court of Appeals, affirming the District Court, is annexed to this Petition as Ex. A, this App. P. 1a. The Order denying Petition for Rehearing is annexed as Exhibit B, this App. P. 5a. The Mandate issued on July 28, 1983, Exhibit A, this App. P. 1a.

The Order and Judgment of the District Court is annexed as Exhibit C, this App. P. 7a; Order setting trial date is annexed as Exhibit D, this App. P. 9a.

JURISDICTION

The Order and/or Judgment of the Court of Appeals is annexed to this Petition as Appendix A, this App. P. 1. A timely-filed Petition for Rehearing was denied on July 8, 1983, Exhibit B, this App. P. 5a. This Petition for Certiorari was filed within sixty (60) days of the Petition for Rehearing having been denied.

The Court's jurisdiction is invoked pursuant to 28 U.S.C.A. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides in pertinent part that, "No persons shall be . . . ; nor be deprived of life, liberty, or property, without due process; nor shall private property be taken for public use, without just compensation.

SEVENTH AMENDMENT: In suits at common law, where the value in controversy shall exceed twenty dollars ($20), the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rule of the common law.

Pertinent parts of the Fourteenth Amendment provide that, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of

life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

42 U.S.C. 1983 provides, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress."

STATEMENT

The instant action is one alleging that Defendants Condit and Hedrick conspired to deprive Plaintiff of rent due, pursuant to a federal housing assistance payment contract between Plaintiff and the City of Covington. SEE Complaint Rec. NR 1, CAP App. P. 6, 12, 13, 14.

Plaintiff had a contract with the City of Covington to provide an apartment to a tenant pursuant to 42 U.S.C. 1437. Condit and Hedrick refused to let Plaintiff collect a fair rent (market rent). And when Plaintiff complained Condit and Hedrick caused, (1) the City's portion of the rent to be withheld, (2) the City to pass a City Ordinance requiring all 2-family homes to have a fire escape (contra to National Building Code) and, (3) had Plaintiff wrongfully prosecuted pursuant to the wrongfully passed ordinance.

After a final pre-trial conference was held on September 10, 1980, the Trial Court, inter alia, ordered, "That the case is hereby set for trial by Jury the week of November

3rd or November 11, 1980. Parties will be advised by the Court of the exact date."

On November 7, 1980, Mr. McMurtry, counsel for Defendants, filed a Motion for Summary Judgment with Memorandum of Law and Affidavit of June Hedrick.

Mr. McMurtry did not serve his Motion for Summary Judgment, Memorandum of Law, or Affidavit of June Hedrick upon Plaintiff (Petitioner), REC. NR 44.

Two (2) days later on November 9, 1980, Mr. McMurtry filed a Supplemental Memo of Law for Defendants. Mr. McMurtry did serve his Supplemental Memo of Law upon Plaintiff.

Back on October 15, 1980, Plaintiff moved the Trial Court, inter alia, to add the City of Covington as a party defendant, NR. 48.

On October 16, 1980, Mr. McMurtry filed a Motion for Oral Hearing and Pre-Trial Conference with Affidavit by counsel (Mr. McMurtry), NR. 47. (We may note that said Motion was filed subsequent to a final pre-trial conference.) SEE Ex. D, this App. P. 9a, CAP, App. P. 56. On June 30, 1981 the Trial Court granted Defendants' Motion for Summary Judgment and dismissed the action without prejudice at the cost of Plaintiff. NR. 53, this App. P. 9a, CAP App. P. 82.

In an Unpublished Decision, the Court of Appeals affirmed the District Court's Judgment pursuant to Rule 9 (d) (3) Rules of the Sixth Circuit – (We may add without due process – no hearing.)

REASONS FOR GRANTING THE WRIT

At the outset, we are confronted with the narrow threshold question of – "Whether the District Court properly dismissed the Complaint by Summry Judgment?"

The District Court ordered and adjudged, ". . . That the motion of the Defendants for Summary Judgment be, and it is, hereby dismissed without prejudice at the cost of the Plaintiff." REC. NR. 53, App. P. 82.

The Court of Appeals affirmed in an Unpublished Decision, without a hearing.

Dismissal of action by summary judgment for Defendant is with prejudice. *Dredge Corporation* v. *Penny*, 338 F.2d 456.

A Summary Judgment should only be given when it is quite clear what the truth is. *Heyward* v. *Public Housing Administration*, (10th Cir.) 238 F.2d 689, and . . .

A Summary Judgment against a Plaintiff will be vacated and the cause will be remanded, where district court's order is opaque and unilluminating as to either the relevent facts or law with respect to the Merits of Plaintiff's claim. *Carter* v. *Stanton*, 405 U.S. 669, 671.

At the time of the filing of this suit, accepted practice was that a city was immune from civil liability in suits brought pursuant to 42 U.S. 1983, *Monroe* v. *Pape, Supra*, 365 U.S. 167. Subsequently, this court has ruled that, "A municipality has no immunity from liability under the Civil Right Act flowing from its constitutional violations and may not assert the good faith of its officers as a defense to such liability. *Owen* v. *City of Independence*, 100 S.Ct. 1398, 445 U.S. 622.

This court said in *Monell* v. *New York City Dept. of*

Soc. Services (1978), 436 U.S. 690, "If the actions of defendants were unconstitutional implements, or if they executed policy, statement, ordinance, regulation, or decisions officially adopted by those whose edicts or acts may fairly be said to represent official policy, the city was liable." . . . . "When a court passes judgment on a municipality's conduct in an action brought under the Civil Rights Act, (42 U.S.C. 1983) it does not seek to second-guess the "reasonableness" of the City's decision nor to interfere with the local government's resolution of competing policy considerations; rather, it looks only to whether the municipality has conformed to the requirements of the Federal Constitution and Statutes." As was stated in *Sterling* v. *Constantin,* 287 U.S. 378, 398. "When there is a substantial showing that the exertion of state power has overriden private rights secured by that constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression."

Thus, the Third (3rd) Circuit recognized the question of *'immunity'* as a question of Federal Law and not a decision for state courts. 42 U.S.C. 1983, *Staten* v. *Housing Auth. of the City of Pittsburgh,* 638 F.2d 599 (1980) . . . and in cases such as this: "It is appropriate for courts to supply contract terms requiring performance within a reasonable time when such terms are necessary to fulfill the purpose of the contract. *Holbrook* v. *Pitt.*" 643 F.2d 1261 (7th Cir. 1981).

Defendants may argue the city was not named. Plaintiff filed a Motion to add the City. REC. NR 48, CAP App. P. 68.

"A motion to add additional party defendants will be granted when it appears that plaintiff has established a

claim against defendant." *Choral* v. *Andus,* 77 FRD 497 . . . and "Parties may be added or dropped by order of the court on motion of any party or on its own initiative at any stage of the action." *Zarate* v. *State Department of Health and Rehabilitative Service,* 347 F.Supp. 1104, Affirmed 32 L.Ed. 2d 803, 407 U.S. 918.

When the trial court dismissed plaintiff's federal claim without prejudice, it is clear that the trial court was abdicating its authority in this case. The surrender of jurisdiction may not be, ". . . in difference to the right of a party plaintiff to choose a federal court; where there is a choice, it cannot be denied." *England* v. *Louisiana Medical Examiners,* 375 U.S. 411 — In the last term, this Court held, ". . . The presence of federal-law issues must always be a major consideration weighing against surrender." *Mose H. Cone Hospital* v. *Mercury Construction,* 74 L.Ed. 2d 765 (1983).

It is undisputible that Plaintiff and the City of Covington entered into a contract pursuant to the United States Housing Act of 1937, 42 U.S.C. 1437, et seq., at Section 1437a (6), it is also undisputible that Condit and Hedrick in their official capacity prevented the City from making payment to plaintiff. It is clear from the record that the City did not rescind or otherwise annul the contract. The family remained in the apartment until late 1980 when Plaintiff explained to the tenant that he (Plaintiff) could no longer pay the tenants utilities.

Copies of the contract which are attached to Complaint, REC. NR 1, as Exhibits B and C are attached hereto as Exhibits B and C. They are in the Court of Appeals Appendix. App. P. 12, 13, 14, 15.

In view of these facts, Plaintiff should recover on "quantum merits".

Essential elements of recovery under quantum merits are: (1) valuable services were rendered or material furnished, (2) for person sought to be charged, (3) which service and material were accepted by person sought to be charged, used and enjoyed by him, (4) under such circumstances as reasonably notified person sought to charged that plaintiff, in performing such services, was expecting to be paid by person sought to be charged. *Monites* v. *Naismith and Trevino Construction Co.*, 459 S.W. 2d 681, 694.

In passing, it is clearly obvious why Mr. McMurtry did not service his Motion for Summary Judgment upon Plaintiff. He (Mr. McMurtry) knew Defendants were not entitled to a Judgment on the merits.

CONCLUSION

The decisions below are clearly erroneous. This Court should summary reverse with directs to the trial court to make a determination of the sum due Plaintiff.

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APPENDIX

Exhibit A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 81-5573

EDDIE THOMPSON, JR.,

Plaintiff-Appellant,

v.

JUNE HEDRICK AND JOSEPH CONDIT,

Defendants-Appellees.

ORDER

(Filed May 4, 1983)

Before: KENNEDY and JONES, Circuit Judges; and COHN, District Judge.*

Plaintiff, a resident of Covington, Kentucky, appeals from a district court judgment granting the defendants' motion for summary judgment in plaintiff's civil rights action brought under 42 U.S.C. §§ 1983 and 1985 against

* The Honorable Avern Cohn, U.S. District Judge for the Eastern District of Michigan, sitting by designation.

two former City of Covington officials. Plaintiff alleged that June Hedrick, as director of the city's public housing agency which was established to administer Section 8 rent subsidy funds, and Joseph Condit, acting as city manager of Covington, both conspired to deprive the plaintiff and his tenant of a fair rental subsidy because he is black. The plaintiff explained that both defendants maliciously caused the city to pass an ordinance requiring that all two family structures have a fire escape with the intention of denying the plaintiff a fair rental subsidy for himself as the building lacks a fire escape. Plaintiff further alleged that the defendants directed housing inspectors to order his tenant to vacate his building, and, that the defendants also maliciously caused him to be arrested and prosecuted for operating his building in violation of the ordinance. On appeal from the award of summary judgment for the defendants, the plaintiff argues that he had been informed that his building did not need a fire escape, that the district court should not have relied on his deposition testimony nor on June Hedrick's affidavit supporting her motion for summary judgment because he never received his copies of these documents, that interpretation of his rent subsidy contract presents a material question of fact and that the defendants maliciously interfered with his contract for rent subsidy which constitutes a tort under Kentucky law for which he is entitled to receive quantum meruit damages.

Even liberally construing the defendants' motion for summary judgment in a light most favorable to this plaintiff, *Adickes* v. *Kress & Co.*, 398 U.S. 144, 157-159 (1970), this Court concludes that the plaintiff's action was properly dismissed by the district court. Although the plaintiff's argument that he never received a copy of his own deposition testimony has some procedural appeal, he fails to

demonstrate any reason why the substance of what he said during the deposition was misstated or reported in error. The plaintiff also does not disclose in this appeal what errors are contained in the deposition although he has had an ample opportunity to review the deposition which is contained in the district court record. Ms. Hedrick's affidavit does not address the central issue in this case, *i.e.*, the motivating reason for passing the city ordinance requiring two family structures to have two unobstructed exits leading to open spaces at ground level. Thus assuming that plaintiff never received a copy, he was not prejudiced by that fact.

The plaintiff's action was properly dismissed upon the entry of summary judgment for several reasons. The plaintiff inadequately opposed the defendants' motion for summary judgment as his complaint, deposition and response failed to show a genuine issue as to a material fact, *R. E. Cruise, Inc.* v. *Bruggerman,* 508 F.2d 415 (6th Cir. 1975) (per curiam); and, plaintiff furthermore never presented a foundation on which the district court could find a basis of class-based racial discrimination under 42 U.S.C. § 1985, *Dunn* v. *State of Tennessee,* 697 F.3d 121, 124 (6th Cir. 1982); *Browder* v. *Tipton,* 630 F.2d 1149, 1150 (6th Cir. 1980), nor did he adequately present evidence showing that the defendants committed a constitutional tort cognizable under 42 U.S.C. § 1983 as opposed to a tort that may be cognizable under Kentucky state law. *Tonti* v. *Petropoulous,* 656 F.2d 212, 216 (6th Cir. 1981); *Studen* v. *Beebe,* 588 F.2d 560, 566 (6th Cir. 1978); *Ohio Inns* v. *Nye,* 542 F.2d 673, 679 (6th Cir. 1976), *cert. denied,* 430 U.S. 946 (1977). Viewed in its totality, the plaintiff's cause improperly presented mere conclusions and inferences drawn from other inferences. *Place* v. *Shepherd,* 446 F.2d 1239, 1244 (6th Cir. 1971).

For these reasons this panel unanimously agrees that oral argument is not necessary in this appeal. Rule 34 (a), Federal Rules of Appellate Procedure. The district court's judgment is, accordingly, affirmed pursuant to Rule 9 (d) (3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

ISSUED AS MANDATE: JULY 28, 1983
COSTS: NONE

Exhibit B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 81-5573

EDDIE THOMPSON, JR.,

Plaintiff-Appellant,

v.

JUNE HEDRICK AND JOSEPH CONDIT,

Defendants-Appellees.

ORDER

(Filed July 8, 1983)

Before: KENNEDY and JONES, Circuit Judges; and COHN, District Judge.*

This matter is before the Court on the plaintiff-appellant's petition for rehearing *en banc* in the above styled case. A majority of the Court having not voted in favor of an *en banc* rehearing, the plaintiff's petition has been referred to the panel which originally considered the appeal.

This panel has carefully re-examined the record and has reviewed the petition for rehearing and has concluded

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* The Honorable Avern Cohn, U.S. District Judge for the Eastern District of Michigan, sitting by designation.

that the plaintiff has presented nothing which calls for a result different from that reached by this Court in its order of May 4, 1983.

Accordingly, it is ORDERED that the petition for rehearing be and hereby is denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-05

EDDIE THOMPSON, JR.,

Plaintiff,

v.

JUNE HEDRICK, ET AL.,

Defendant.

ORDER

(Filed September 12, 1980)

On September 10, 1980, in open court, a final pre-trial conference was held. The plaintiff was present and represented himself, *pro se;* and the defendants were not present but were represented by Stephen T. McMurtry of the Office of the City Solicitor of Covington, Kentucky.

IT IS ORDERED herein as follows:

1) That the case is hereby set for trial by JURY the week of November 3rd or November 11, 1980. Parties will be advised by the court of the exact date.

2) That the defendant, Joseph Condit, is hereby advised to file a motion for summary summary at the earliest possible date.

3) That the deposition of plaintiff, Eddie Thompson, Jr., taken on Saturday, September 6, 1980, be filed in the record as soon as possible.

This 12th day of September, 1980.

/s/ WILLIAM O. BERTELSMAN
Judge

Exhibit D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-05

EDDIE THOMPSON, JR.,

Plaintiff,

v.

JUNE HEDRICK, ET AL.,

Defendant.

ORDER AND JUDGMENT

(Filed June 30, 1981)

This matter is before the court on the motion of the defendants for summary judgment. Having made a careful review of the record herein, the court believes that it is clear from the record that the defendants acted in good faith throughout this matter. Therefore, the court being advised,

IT IS ORDERED AND ADJUDGED that the motion of the defendants for summary judgment be, and it is, hereby granted, and that this action be, and it is, hereby dismissed without prejudice at the cost of the plaintiff.

This 30th day of June, 1981.

/s/ WILLIAM O. BERTELSMAN
Judge

Master ACC No. _____ Ex-B

HUD 52535A (4-75) ACC List No. and Date _____

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM
HOUSING ASSISTANCE PAYMENTS CONTRACT

EXISTING HOUSING

PART I

This Housing Assistance Payments Contract ("Contract") is entered into by and between Eddie Thompson, the person or entity having the legal right to lease the unit ("Owner"), and City of Covington ("PHA"), which is a public housing agency as defined in the United States Housing Act of 1937, 42 U.S.C. 1437, et seq. ("Act"), at Section 1437a(6). The PHA is acting pursuant to an Annual Contributions Contract with the Government dated November 10, 19 75, with respect to Project No. A-2870 ("ACC") (see Section 2.3 of this Contract).

The Owner and the PHA agree as follows:

1.1 FAMILY TO BE HOUSED, PHA ASSISTANCE.

a. Family to be Housed. The Contract Unit is to be leased by the Owner, under a PHA-approved lease ("Lease"), to the following Lower-Income Family ("Family") for use and occupancy by such Family solely as a private dwelling:

Sharon Powell
(Name of Family)

b. PHA Assistance and Contract Unit. In order to enable the Family to lease Decent, Safe, and Sanitary housing pursuant to Section 8 of the Act, the PHA agrees to make housing assistance payments on behalf of the Family for the following described dwelling unit ("Contract Unit"):

309 Pleasant, 2nd floor

c. Term of Contract. The term of this Contract shall be 1 yr. years [the term of the Lease, not to exceed three years] beginning on June 10, 1976, [the effective date of the Lease] and ending June 9, 19 77; Provided, however, that if the Family continues in occupancy, after the expiration of the term, on the same terms and conditions as the original Lease, the Contract shall continue in effect for the duration of such tenancy, but in no case for a total term of more than five years.

10a

the original date was changed, I have (am) the original copy

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM
EXISTING HOUSING

PART I OF THE

HOUSING ASSISTANCE PAYMENTS CONTRACT

MASTER SECTION 8 ACC NUMBER:	EXISTING HOUSING ACC PART I NUMBER AND DATE:	CONTRACT NUMBER:
	5/10/77	A-2870

This Housing Assistance Payments Contract ("Contract") is entered into between the Owner, Eddie Thompson, and the PHA, City of Covington, Ky., which is a public housing agency as defined in the United States Housing Act of 1937 ("Act"). The PHA is entering into this Contract pursuant to an Annual Contributions Contract ("ACC") with the United States of America ("Government") (see Section 2.3 of this Contract).

The purpose of this contract is to enable the Lower-Income Family identified in Section 1.1 to lease a Decent, Safe, and Sanitary dwelling unit pursuant to the Section 8 Housing Assistance Payments Program.

The Owner and the PHA agree as follows:

1.1 CONTRACT UNIT, FAMILY, AND LEASE.

(a) Contract Unit and Family. The following described dwelling unit ("Contract Unit") is leased by the Owner under a lease approved by the PHA ("Lease") to the following Lower-Income Family ("Family"):

Contract Unit: 309 Pleasant St., 2nd fl.
(Address of Unit, including Apt. No. if any)

Family: Sharon Powell
(Name of Person(s) Signing Lease)

(b) Lease. The Lease shall at all times contain the Required Lease Provisions set forth in Appendix VI of the Existing Housing Regulations, 24 CFR, Part 882, but shall not contain the Prohibited Lease Provisions set forth in Appendix VII of the Regulations. A copy of the Required Lease Provisions and of the Prohibited Lease Provisions shall be made available by the PHA to the Owner at the Owner's request in advance of execution of this Contract.

1.2 CONTRACT RENT, FAMILY PORTION OF RENT, ASSISTANCE PAYMENTS.

(a) Amount of Contract Rent. The total rent payable to the Owner for the Contract Unit ("Contract Rent") is $ 170 per month.

(b) Family Portion of Rent. The amount payable by the Family toward the Contract Rent is $ 36 per month.

(c) PHA Assistance Payment. The PHA shall pay on behalf of the Family a housing assistance payment of $ 134 per month. This amount is equal to the difference between the Contract Rent and the Family portion of the Contract Rent. Neither the PHA nor the Government has assumed any obligation whatsoever for the Family portion of the Contract Rent, or for the satisfaction of any claim by the Owner against the Family, except in accordance with Section 1.5 of this Contract. The financial obligation of the PHA is limited to making housing assistance payments on behalf of the Family in accordance with this Contract.

(d) Adjustments. The Family portion of the Contract Rent and the amount of the housing assistance payment are subject to change by reason of changes in (1) Family income or composition, (2) the extent of exceptional medical or other unusual expenses, or (3) the Allowance for Utilities and Other Services, all as determined by the PHA, effective as of the date stated in a notification by the PHA of such change to the Family and the Owner.

(e) Termination of Payments Due to Family Ineligibility.

(1) The Family's eligibility for housing assistance payments continues and the amount payable by the Family equals the total Contract Rent plus any applicable Allowance. However, the termination of eligibility at such point shall not affect the Family's other rights under its Lease nor shall such termination preclude resumption of payments as a result of subsequent changes in income or rent or other relevant circumstances during the term of this Contract. However, (i) if this Contract terminates at a time when the Family is ineligible for housing assistance payments, the Contract shall not be renewed and (ii) if one year has elapsed since the date of the last housing assistance payment on behalf of the Family, this Contract shall be terminated even though the termination date under Section 1.3 has not yet been reached.

(2) The PHA may determine, after having given the Family reasonable notice (with a copy to the Owner) and opportunity to respond, that the Family is ineligible for further housing assistance payments because of failure to comply with the Family's obligations under the Certificate of Family Participation. The PHA shall notify the Family and the Owner of such determination. This notification shall state that housing assistance payments on behalf of the Family shall terminate as of the date of the notification and that this Contract shall also terminate as of that date. However, if the Owner proceeds to evict the Family as quickly as possible, this Contract shall continue in effect solely for the purpose of enabling the Owner to receive further housing assistance payments for the period of the tenant's occupancy pending eviction until commencement of occupancy by another tenant, not to exceed a period of 60 days, in accordance with and subject to the conditions and limitations of Sections 1.4(a), (b), and (c) not inconsistent with such purpose.

1.3 TERM OF CONTRACT.

The term of this Contract shall be 1 years [the term of the Lease] beginning on 6/10/77, 19____; Provided, however, that if the Family continues in occupancy, after the expiration of the term, on the same terms and conditions as the original Lease, the Contract shall continue in effect for the duration of such tenancy, but the total duration of the Contract shall in no case exceed beyond the term of the ACC.

1.4 PAYMENT FOR VACATED UNITS.

Housing assistance payments shall be made by the PHA to the Owner, under the terms and conditions of this Contract, only for the period during which the Contract Unit is leased or occupied by the Family during the term of the Contract (see Section 1.3), except as follows:

(a) If the Family vacates its unit in violation of the provisions of the Lease or tenancy agreement, the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days or the expiration of other

termination of the Lease or tenancy agreement, whichever comes first; Provided, however, that if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to the Government or as the Government may direct; and provided further that if the vacancy is the result of action by the Owner, the Owner shall not receive any payment under this Section 1.4 if the action was in violation of the Lease or the Contract or any applicable law. (See Section 2.6.)

(b) The Owner shall not be entitled to any payment under this Section 1.4 unless he (1) immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy, (2) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to, contacting applicants on his waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant except for good cause acceptable to the PHA.

(c) The Owner shall not be entitled to housing assistance payments with respect to vacant units under this Section 1.4 to the extent he is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the Housing and Community Development Act of 1974 or payments under Section 1.5).

1.5 SECURITY DEPOSITS. [This section is applicable only if the Owner has required the Family to pay a security deposit.]

(a) The Family has paid the Owner a security deposit in an amount equal to the amount payable by the Family toward one month's Gross Rent. If the Family vacates the unit, the Owner, subject to State and local law, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the amount of the security deposit is insufficient for such reimbursement, the Owner may claim reimbursement from the PHA, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this Section shall be applied first toward any unpaid rent. If the Family vacates the unit owing no rent or other amount under the Lease, or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

1.6 OTHER CONDITIONS FOR HOUSING ASSISTANCE PAYMENTS.

The rights of the Owner to receive housing assistance payments under this Contract shall be subject to his compliance with all the provisions of this Contract, including Part II which contains provisions on matters including, but not limited to, the requirements for obtaining payments, the provision of required services, and maintenance of the Contract Unit in Decent, Safe, and Sanitary condition.

1.7 ENTIRE AGREEMENT. This Contract, including Part II hereof, contains the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein. No change in this Contract shall be made except in writing signed by both the Owner and the PHA.

1.8 OWNER'S WARRANTY OF LEGAL CAPACITY. The Owner warrants that he has the legal right to execute this Contract and to lease the dwelling unit covered by this Contract.

PHA City of Covington, Ky.

By Robert J. Sudduth

Director of Housing & Code Enforcement
(Official title)

Date 5/10/77

OWNER Eddie Thompson

By Eddie Thompson Jr.

(Official title)

Date 5/10/77

D-52517C
'75)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Section 8 Housing Assistance Payments Program
Existing Housing

AGENCY DETERMINATION WITH RESPECT TO REQUEST FOR LEASE APPROVAL
(To be Sent to the Owner and the Family)

Check Applicable Box)

[x] 1. Approval. The Agency hereby approves the proposed lease between Sharon Powell (Family) and Eddie Thompson (Owner) for the dwelling unit located at 309 Pleasant St., 2nd fl. (Street Address and Apartment Number, if any)

The Agency hereby certifies that the Current Rent is reasonable.

(a) Enclosed is the proposed lease, which has been completed by the Agency with respect to the portion of the monthly lease rental which the Family shall be obligated to pay to the Owner. The Lease shall be executed by the Family and the Owner and a copy returned to the Agency.

(b) Also enclosed are two copies of a Housing Assistance Payments Contract completed by the Agency except for execution. The Owner shall sign both copies of the Contract and return them to the Agency. The Agency will execute the Contract by the first day of occupancy specified in the Lease and will immediately return an executed copy to the Owner.

[ ] 2. Disapproval. The proposed lease and/or the dwelling unit are/is disapproved for the following reasons:

_____

_____

_____

_____

[ ] 3. Resubmission. If the conditions in Item 2 above are remedied, and a Request for Lease Approval is resubmitted by the Owner and the Family to the Agency by _____ (date), the lease will be approved by the Agency if it determines that the conditions have been remedied to its satisfaction. (The Certificate of Family Participation issued to the Family shall not expire before said date.)

City of Covington, Ky.
(Name of Public Housing Agency)

5/10/77
(Date)

By: Robert L Isdell
(Signature of Approving Official)

Director of Housing & Code Enforcement
(Title of Approving Official)

292-2215
(Telephone)

83-481

No. ———

SUPREME COURT, U.S.
FILED
SEP 26 1983
ALEXANDER L. STEVAS,

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

———

EDDIE THOMPSON, JR.,

Petitioner-Plaintiff,

v

JUNE HEDRICK
JOSEPH CONDIT,

Respondents-Defendants.

———

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

———

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Room 906 City-County Building
Third and Court Streets
Covington, Kentucky 41011

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QUESTION PRESENTED

1. Has the Petitioner stated any issue which has any relevancy or connection to the single issue of the case as considered by the Sixth Circuit Court of Appeals, to-wit: "Did the Court properly grant the Defendants, Hedrick and Condit, dismissal of the complaint on their motion for summary judgment?"

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

No. ———

EDDIE THOMPSON, JR.,

Petitioner-Plaintiff,

v.

JUNE HEDRICK
JOSEPH CONDIT,

Respondents-Defendants,

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Plaintiff alleged that June Hedrick, Director of the City of Covington Public Housing Agency, and Joseph Condit, acting City Manager, conspired to deprive him and his tenant of a fair rental subsidy because he is black. Hedrick and Condit allegedly caused the legislative body of the City to pass an ordinance requiring that all two-family homes have a fire escape with the intention of excluding Plaintiff from his subsidy because his building lacked a fire escape; that they further ordered City building inspectors to require Plaintiff to vacate his building and caused him to be arrested and prosecuted for operating a building in violation of the ordinance.

The Defendants took the deposition of Eddie Thompson, Plaintiff, and filed a motion for summary judgment with a supporting affidavit of June Hedrick and Thompson's completed deposition. Thompson claimed he never received a copy of the motion for summary judgment, although the record revealed he responded to it, and that he never received a copy of his deposition. The Sixth Circuit Court of Appeals determined that, assuming the truth of this claim, Thompson was not prejudiced by it. (Petitioner's Appendix 3a).

The Sixth Circuit Court of Appeals in an Order dated May 4, 1983, and after rehearing en banc in an Order dated July 8, 1983, ruled that Plaintiff's action was properly dismissed for several reasons. (1) The Plaintiff inadequately opposed Defendants' motion for a summary judgment because his complaint, deposition, and response failed to show a genuine issue as to a material fact. (2) Plaintiff never showed a foundation upon which to find class-based racial discrimination under 42 U.S.C. 1985. (3) Plaintiff did not demonstrate a constitutional tort cognizable under 42 U.S.C. 1983. (4) Plaintiff presented mere conclusions and inferences drawn from other inferences. (Petitioner's Exhibits A and B, particularly at page 3a).

SUMMARY OF ARGUMENT

Eddie Thompson, who petitions for a writ of certiorari pro se, has presented no reason why the Supreme Court should review his case, has stated issues irrelevant to the ruling of the Sixth Circuit Court of Appeals, and has failed to demonstrate how the lower court erred.

ARGUMENT

The Petitioner, Eddie Thompson, has not given any good reason why the Court should grant a review of his case. He has not demonstrated any conflict in state or federal law or alleged that the Sixth Circuit Court of Appeals has "departed from the accepted and usual course of judicial proceedings."

There was only one issue before the Sixth Circuit Court of Appeals, the correctness of granting Defendants' motion for a summary judgment, and that should be the issue considered by the Supreme Court in deciding the appropriateness of granting a writ of certiorari.

Eddie Thompson does not even consider this singular issue in his rambling argument for granting the writ except to cite some general propositions of law concerning the granting of summary judgments and to conclude that "it is undisputable that Condit and Hedrick in their official capacity prevented the City from making payment to Plaintiff." (Petition for Writ, page 7). This is another example of Thompson's unending catalogue of conclusory allegations and inferences on inferences without a scintilla, a whit, or a jot or tittle of fact.

All other matters discussed by Thompson are irrelevant.

CONCLUSION

Petitioner, Thompson, has not demonstrated any reasons why the ruling of the Sixth Circuit Court of Appeals should be reversed or why this Court should grant him a writ of certiorari. The Petition should be denied.

Respectfully submitted,

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Covington, Kentucky 41011
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